IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1562 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

TULSI MAVJI KOLI

Versus

STATE OF GUJARAT

Appearance:

MS KRISHNA U MISHRA for Petitioner

MR. PUJARA A.G.P. for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 24/04/2001

ORAL JUDGEMENT

1. The petitioner came to be detained by virtue of an order passed by District Magistrate, Rajkot on September 21, 2000 in exercise of powers under Section 3, Sub Section 1 of the Prevention of Anti Social Activities

Act, 1985 (for short 'P.A.S.A Act'). The grounds of detention indicate that the petitioner has been detained under the P.A.S.A Act after being labelled as a boot legger, as defined under the P.A.S.A Act. For arriving at this conclusion the detaining Authority took into consideration the offences registered against the detenu under Bombay Prohibition Act in respect of country made liquor. The detaining Authority also took into consideration statements of 4 witnesses whose identity has not been disclosed by the detaining Authority in exercise of powers under Section 9 (2) of the P.A.S.A Act. After recording of satisfaction that identity is not required to be disclosed, as there is risk to the person and property of such witnesses from the detenu, the detaining Authority recorded a satisfaction that the fear expressed by the anonymous witnesses is genuine. The Authority further recorded a satisfaction to the effect that resorting to alternative less drastic remedies is not possible as the petitioner is required to be immediately detained in order to prevent him from pursuing his illegal Anti Social Activities.

2. Aggrieved by the said detention the petitioner has preferred this petition, challenging the order of detention.

3. In the meantime on 12th February, 2001 a representation was made on behalf of the petitioner demanding report of the Forensic Science Laboratory in respect of registered offences as well as statements of certain witnesses in respect of C.R.5052/97, 5014/99, 5030/99 and 5041/99.

4. Ms. Mishra appearing for the petitioner has raised following contentions before this Court for assailing the action and order of detention.

4.1. The detaining Authority has not supplied the report of the chemical analysor of the Forensic Science Laboratory in respect of the registered offences. She states at the bar that till date, despite a representation and specific demand, the Forensic Science Laboratory reports as well as statement of witnesses have not been supplied to the detenu. She therefore submitted that, the petitioners right of making an effective representation is therefore adversely effected and therefore his continued detention would be vitiated.

4.2. Ms. Mishra submitted further that the statements of the anonymous witnesses were recorded by the sponsoring Authority namely Police Inspector, Upleta.

The same have been verified by D.Y.S.P Jethpur. The detaining Authority has recorded a satisfaction about the genuineness of the fear expressed by the witnesses and has exercised powers under Section 9 (2) of the P.A.S.A Act. The said satisfaction cannot be said to be subjective as there is no verification by the detaining Authority itself. Even the grounds of detention specifically state that the verification is done by D.Y.S.P. Ms. Shah therefore submitted that the satisfaction of the detaining Authority cannot be considered as genuine and there is improper exercise of powers under Section 9 (2) of the P.A.S.A Act which has adversely effected the right of detenu of making an effective representation. As a result the petition may be allowed.

5. Mr. Poojari learned A.G.P. has opposed this petition vehemently. He submitted that Senior Police Officer has verified the statements of the witnesses and thereafter the detaining Authority has exercised the powers under Section 9 (2) of the P.A.S.A. Act and therefore there is no reason to doubt the satisfaction. So far as non supply of Forensic Science Laboratory report and statement of witnesses are concerned, Mr. Poojari submitted that a communication is sent to the petitioner that the same would be supplied in due course. He therefore urges that the petition should be dismissed.

6. Having regard to the contentions raised before this Court, it is amply clear that the detaining Authority has branded the detenu as a boot-legger and for that purpose has placed reliance on 8 registered offences. All the offences are under Bombay Prohibition Act in respect of country made liquor. Obviously there has to be something prima-facie to indicate that the petitioner is involved with boot legging activities in respect of country made liquor. For that purpose a report of the Forensic Science Laboratory to the effect that what was seized from the detenu was country made liquor has to be there. The Forensic Science Laboratory report has not been supplied to the detenu, meaning thereby that the detenu's right of making a representation is affected. If the Forensic Science Laboratory report is not there then the satisfaction of the detaining Authority would be affected as there would be no basis for forming a conclusion that detenu is involved in boot legging activities. That apart, the detenu's right of making an effective representation would be infringed. This continued detention would therefore be vitiated.

7. So far as the statements of anonymous witnesses are concerned they have not been verified by the detaining Authority. What is done is that the D.Y.S.P. has verified the statements and on that basis the detaining Authority has taken the action by recording a satisfaction about genuineness of the fear expressed by the witnesses and need for exercise of powers under Section 9 (2) of the P.A.S.A. Act. No affidavit in reply is filed by the detaining Authority. There is nothing to indicate that there was any communication between the D.Y.S.P and the detaining Authority indicating the procedure adopted by the D.Y.S.P. for verification and the reasons for expecting the fear expressed by the witnesses is genuine, and in absence of this material it cannot be said that satisfaction arrived at by the detenu for exercise of powers under Section 9(2) of the P.A.S.A. Act was genuine.

8. The out come of the above discussion is that the petitioner - detenu's legitimate right of having documents on basis of which the detention order is passed namely the Forensic Science Laboratory report in respect of registered offences, likewise, so far as the statement of witnesses are concerned the genuineness of the need for exercise of power under Section 9(2) is also found to be not genuine, and therefore, non supply of details of the identity of the anonymous witnesses has also been affected. Resultantly, the detention and continued detention of the petitioner would stand vitiated. The petition therefore deserves to be allowed and the same is allowed. The order impugned herein passed by District Magistrate Rajkot is hereby quashed and set aside. The detenu - petitioner- Tulsi Mavji Koli shall be set at liberty forthwith, if not required in any other case. Rule is made absolute. No costs. Direct service is permitted.

(A.L. DAVE,J.)

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